

Elements of the Violation

“It’s a good thing!”

Martha Stewart

1

Elements of the Violation

- ♦ **Pieces of a puzzle**

2

Element Defined

- ♦ **An element is the breakdown of the simplest parts of the requirement**
- ♦ **It is that which must be proved to establish that a violation (of a requirement) occurred**

3

Why Bother?

- ♦ **It is the basic analytical exercise**
- ♦ **Explains to others why you are taking an action**
- ♦ **Provides a “sketch” of the case**

4

“Checklist” Approach

- ♦ Leads to logical presentation
- ♦ Easier to follow

5

When and How?

- ♦ When something probably happened...
- ♦ Analyze sections that may apply
- ♦ Exclude sections that don't apply

6

Simplifies Investigations

- ♦ Allows you to “plan” investigation
- ♦ Allows focus on priorities,
e.g., evidence
collection

7

Organizes

- ♦ It can help to make the NOPA
“understandable”
- ♦ It can help the Advocate present a clear
and complete case

8

Quality Control

- ♦ **Helps eliminate irrelevant and unreliable information**
- ♦ **Helps prevent weak enforcement actions, or actions that can't be upheld**

9

Helps the Hearing Officer

- ♦ **Easier for Hearing Officer to make findings (in your favor)**
- ♦ **Easier for Hearing Officer to write a clear decision (in your favor)**

10

Evidence Defined

- ♦ **A fact of consequence which furnishes proof of the violation**

11

Examples of Evidence

- ♦ **Witness Statements**
- ♦ **Expert Testimony**
- ♦ **Photos & Diagrams**
- ♦ **Laboratory Analyses**
- ♦ **Reports**
- ♦ **Hearsay**

12

Inference Defined

- ♦ **A conclusion,
based upon reasoning**

13

Make Inferences Only When

- ♦ **You have sufficient facts**
- ♦ **Inferences are clearly labeled**
- ♦ **Not all elements need
an “inference”**

14

Prove the Violation

- ♦ **Select a law, regulation, or rule**
- ♦ **Break it into its “elements”**
- ♦ **Provide a piece of evidence to support
each element**
- ♦ **Decide whether or not a violation
occurred**

15

Break Section Into Elements

- ♦ **3CCR §6678**
- ♦ **Service Container Labeling**

Elements of Violation

16

3CCR §6678

“Service containers, other than those used by a person engaged in the business of farming when the containers are used on the property the person is farming, shall be labeled with: (a) The name and address of the person or firm responsible for the container; (b) The identity of the pesticide in the container; and . . .”

17

3CCR §6678

“Service containers, other than those used by a person engaged in the business of farming when the containers are used on the property the person is farming . . .”

Element 1: When there is a service container

18

3CCR §6678

“*The service container* shall be labeled with:
(a) The name and address of the person or firm responsible for the container; . . .”

Element 2: It shall be labeled with the following list of items . . .

19

3CCR §6678

Element 2: It shall be labeled with the following list of items . . .

Element 2 – The list of specific items . . .

- ◆ Name and address - and . . .
- ◆ Identity – and . . .
- ◆ Signal word.

20

3CCR §6678

2 Elements or 4????

21

Let's get started with
the exercises!

Teams

22

Teams

Squirrels	Ants
Mice	Scorpions
Cockroaches	Silverfish
Rats	Spiders
Termites	Skunks

23

There are five sections
to “elementize”

24

Who does what?

Squirrels and Mice	3CCR §6738(b)
Rats and Ants	B&P §8505
Scorpions and Skunks	FAC § 11701
Cockroaches and Silverfish	3CCR §6600(a)
Spiders and Termites	FAC § 15204

25

Team Captain . . . Blank Worksheets & Your Team's Section

Let's get started!

26

GUILTY

27

QUESTIONS

28